

1 JUDGE SIPPEL: It's the only way to do it.

2 MR. CAMPBELL: I am going to object to
3 that, Your Honor. They had an opportunity to
4 designate excerpts as part of their case.

5 Here they are cross-examining a witness by
6 using his deposition. That is for impeachment
7 purposes. It doesn't come into evidence. It's not
8 moved into evidence.

9 JUDGE SIPPEL: Well, if Mr. Campbell is
10 willing to have the witness look at the transcript,
11 and you identify the page and the number and the
12 transcript, we don't have to get it marked.

13 MR. SEIVER: I understand. I'll do it
14 that way.

15 MR. CAMPBELL: That's my point, Your Honor.

16 MR. SEIVER: I wasn't going to move it into
17 evidence; I was doing it for identification.

18 JUDGE SIPPEL: That's fine. Let's put it
19 in front of him. Let's get the date of the
20 deposition, the page number, and then refer him to the
21 language, and I'd like a copy, too.

22 MR. SEIVER: May I just hand it to him

1 directly?

2 JUDGE SIPPEL: Please do. Thank you.

3 Which page do you want the witness to look
4 at here?

5 MR. SEIVER: Mr. Dunn, four pages appear on
6 a page. So when I mention a page number to look at,
7 if you'd look in the upper right-hand corner of a
8 particular quadrant, you'll see starting at the bottom
9 of page 140, do you see, were you aware that the Court
10 of Appeals in the Eleventh Circuit - if you would read
11 that going on to the next page which is numbered 141.

12 (Witness reviews document)

13 THE WITNESS: How far do you want me to go?

14 MR. SEIVER: I only need you to go to line
15 15, after I asked you if you had that understanding,
16 and you said yes.

17 THE WITNESS: Yes.

18 BY MR. SEIVER:

19 Q So as we sit here today does that refresh
20 your recollection of the understanding that you had
21 that to gain more than marginal cost, the exception to
22 that, was to show full capacity and a buyer waiting in

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1 the wings?

2 A Yes, I understood that that was what the
3 court had said.

4 Q Very well. Now in what the court had
5 said, looking at the last sentence about, without such
6 proof any implementation of the cable rate,
7 parentheses, which provides for much more than
8 marginal cost, close parens, necessarily provides just
9 compensation.

10 I take it that you think that that is a
11 wrong statement; is that right? That you don't
12 believe that the cable rate provides just compensation
13 for poles whether or not they have capacity or buyers
14 waiting in the wings?

15 A No, sir, I don't.

16 JUDGE SIPPEL: Let me just specify that
17 this is language that appears in paragraph -
18 Complainant's Exhibit 51, hearing designation order,
19 paragraph three. Is that correct?

20 MR. SEIVER: There is correct, Your Honor.

21 JUDGE SIPPEL: That's where this language
22 appears?

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1 MR. SEIVER: Yes, and also in the Gulf
2 Power order, which was the bureau order in this case,
3 paragraph 15, which is Complainant's Exhibit 48A,
4 freight application.

5 MR. CAMPBELL: I am going to object, Your
6 Honor. That's been excluded from evidence. So now
7 he's questioning the witness about a document that's
8 already been excluded from evidence, and that's the
9 bureau's order.

10 JUDGE SIPPEL: Well, all I was trying to do
11 is - I don't know why you keep adding on - all I
12 wanted to do is have a point of reference to this
13 language when you - when I'm trying to follow a
14 proposed finding. I'm talking about six months from
15 now; not today. I know what's there today, but the
16 record isn't going to show that.

17 MR. SEIVER: Very well, Your Honor.

18 JUDGE SIPPEL: Okay? So what we're talking
19 about is the language as it appears in paragraph three
20 of the hearing designation order. I'm sorry to do
21 that to you.

22 BY MR. SEIVER:

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1 Q You're saying that you agree or disagree
2 with that last sentence that I read about the cable
3 rate necessarily providing just compensations even
4 though it was much more than marginal cost.

5 Is it fair to say you disagree with that?

6 A I agree that that's what the court said.
7 I disagree that that should be necessary for just
8 compensation.

9 Q That what should be necessary for just
10 compensation?

11 A That you should have to prove these other
12 things, what that says, without such proof.

13 Q I understand. And in this case do you
14 believe that Gulf Power has provided the proof of full
15 capacity and a buyer waiting in the wing?

16 MR. CAMPBELL: Your Honor, I'm going to
17 object. Is he asking Mr. Dunn about our entire case
18 in chief, and everything that is going to be developed
19 in this record?

20 Mr. Dunn has given pre-trial written
21 direct testimony that covers the subjects it covers.
22 I don't think he should be fairly asked to comment on

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1 the entire body of evidence that we're going to
2 submit.

3 JUDGE SIPPEL: I'll sustain the objection,
4 and you can restate.

5 BY MR. SEIVER:

6 Q In preparation for your testimony, have
7 you seen any evidence of Gulf Power's that you would
8 understand show both full capacity and, for example,
9 another buyer space waiting in the wings?

10 A You said, and?

11 Q Yes. I'm reading the court case, and.

12 A It says either.

13 Q I was going to ask you that, and then I
14 was going to ask you about B. I'm asking you if you
15 had seen any evidence that would relate to number one
16 and two A together?

17 A Okay. Let me answer it this way. I think
18 we had demonstrated poles at full capacity that we
19 have identified on a pole by pole basis, buyers
20 waiting in the wings -

21 Q You have or have not?

22 A I said in regard to that, the ILECs could

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1 be considered to fit that, because they've signed
2 contracts, and the poles are at full capacity. And
3 the only way to accommodate the attachment is to give
4 up a foot of our space.

5 And so I think that that could qualify for
6 a buyer waiting in the wings.

7 Q Would that be on a pole where an ILEC is
8 not already there, is that what you mean? Or a pole
9 that an ILEC wants to get on?

10 A It could be either one. They have
11 contracted for space, and our choices at this point
12 would be to give up our own space, or deny you access
13 to the pole.

14 Q Are you free to deny us access to the pole
15 for insufficient capacity?

16 A Under certain situations.

17 Q And what are those situations?

18 A Where you physically can't accommodate it,
19 or if you have an engineering reason or something of
20 that nature.

21 Q In fact in your permitting procedure, if
22 a cable operator applies for a permit to get on a

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1 particular pole, you go through that analysis; am I
2 right?

3 A The permit procedure either in verbal or
4 written form, has been around ever since I've been
5 with the company. It was developed during the
6 voluntary agreement with these companies.

7 Gulf has tried to maintain as many aspects
8 of those contracts as we could as we seek just
9 compensation.

10 I think it's incorrect for you to assume
11 that Gulf would always be willing to make ready
12 because we did it under voluntary agreements.

13 Q Have you ever not done a make ready
14 requests when it's been paid for?

15 A We've not done make ready when there were
16 physical obstructions.

17 Q For instance, a bridge that kept a pole
18 from going higher?

19 A Yes, or on transmission structures that we
20 did not have, distribution facilities, or across
21 waterways, or at airports.

22 That make ready was voluntary, and I don't

1 think any of this where you have mandatory access says
2 that you have mandatory make ready.

3 Q But you have done make ready since there's
4 been mandatory access; is that right?

5 A Because we've tried to continue the
6 contracts without disrupting business.

7 Q And as you've done the make ready and
8 gotten paid for it, would it be fair to say that you
9 have not denied any other attacher the right to get on
10 a particular pole because the cable operator was
11 there?

12 A We might have, if they were not willing to
13 pay make ready. I can't cite you a specific. I do
14 know that entities sometimes change their route
15 because the pole is at full capacity, and we give them
16 a price to do an additional make ready, and they pick
17 another route.

18 So legally I don't know whether we denied
19 them or not, but they didn't get on the pole.

20 Q Have you seen any calculation of the
21 number of poles that would fall under that particular
22 category?

1 A No, I haven't.

2 Q And during your tenure, did you ever keep
3 track of those kinds of poles where there was a
4 refusal or a denial of make ready?

5 A No.

6 Q As far as your recollection of the time
7 when you were at Gulf Power in dealing with the
8 attachers such as cable operators, I think you were
9 talking a little bit about their relationships in the
10 field, and who was paying, and who was doing things.

11 There has been some discussion, and you
12 cover a little bit of it in your testimony, about the
13 NESC; is that right?

14 A Yes.

15 Q And that's the National Electric Safety
16 Code?

17 A Yes.

18 Q And that's something that governs how
19 facilities are arranged on the pole; is that right?

20 A It's a minimum standard.

21 Q Now as far as construction standards, for
22 example, the size of trip loops, and where you put

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1 riser shields and things of that sort, is that more of
2 a Gulf standard, or is that an NESC standard?

3 A It can be either or both. Sometimes our
4 Gulf specifications are identical to the NESC;
5 sometimes they exceed. I'm not aware of any that are
6 less.

7 Q Ms. Corbin, could I have the diagram up?
8 Just looking at this diagram, of the pole,
9 I just want to ask you about some of the items. And
10 I'll do my best to point them out, and hopefully the
11 record will reflect it.

12 These two large cylindrical objects are
13 called transformers; is that right?

14 A That's correct.

15 Q And wires coming out of the transformers
16 carry electric power either for electric service to a
17 street light or to a residence or a business; is that
18 right?

19 A That's correct.

20 Q So the wires at the very top of the pole,
21 is there a name for those?

22 A Those are called primary conducts.

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1 Q And then the power from those primaries is
2 fed into the transformers, and out of the transformers
3 up into these three wires that are going across; does
4 that sound right?

5 A No, sir. It comes out, the black wires
6 coming out the bottom in the service conductors. The
7 wires going forward are primaries also.

8 Q Those are also primaries just being fed
9 from these particular primaries?

10 A Yes.

11 Q So the secondaries would be where the
12 wires - and it appears - do they call it triple X when
13 you have the three wires coming together?

14 A Triplex.

15 Q Triplex. And that looks like it's
16 probably going into a riser, and going down the pole?

17 A It could be.

18 Q And it also - something from that would
19 also be used to power the street light and this flood
20 light?

21 A Yes.

22 Q And as far as measurements are concerned,

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1 when you have a situation of measuring the
2 communication worker's safety zone, which is
3 represented by the yellow, is that right?

4 A Yes.

5 Q I just want to understand that wires -
6 that you would normally measure from the bottom of the
7 transformer, down to the - a measurement to come up
8 with the safety space; is that right?

9 A That's one of the measurements.

10 Q But actually on this diagram, because of
11 the wire coming out of the transformer, isn't that
12 considered the lowest point at which then you will
13 calculate where the communication worker's safety zone
14 starts, and you measure down from that before you
15 could have a communication attachment?

16 A There is a measurement associated with
17 each conductor, yes, sir.

18 Q Well, would it be fair to say in your
19 experience that with the pole as described, with the
20 cable operator there, and either one or two phone
21 companies here, this pole is showing an NESC
22 violation; at least one NESC violation?

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1 MR. CAMPBELL: I'm going to object, Your
2 Honor.

3 This is the point - I raised this with Mr.
4 Seiver at the break when he asked permission to use
5 our demonstrative exhibit.

6 This is not an actual pole that is in
7 evidence in this case. It was demonstrative for
8 purposes of demonstrating the different spacing on the
9 pole.

10 He's now using it and inferring that it's
11 in the record and that there is an actual pole in
12 violation.

13 If he wants to use an actual pole, we've
14 got a lot of photographs, and he can pick one and talk
15 about one, but this is the problem that I anticipated
16 we'd have.

17 JUDGE SIPPEL: I was going to ask that
18 question a few phases back, and I didn't want to ask
19 it for this reason: This is not true - it's
20 demonstrative evidence. It's very helpful to me.
21 It's helpful to the witnesses. It's helpful to I
22 think everybody in the courtroom to understand what is

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1 going on here.

2 But it is not in evidence. And once it
3 loses its demonstrative purpose, we have to move on.

4 MR. SEIVER: I understand, Your Honor. It
5 was used as demonstrative for Your Honor to understand
6 how the pole is set up, and the actual demonstrative
7 evidence that they used shows safety violations, and
8 I was trying to have the witness explain that so that
9 this exhibit can be fully understood for what it's
10 supposed to demonstrate.

11 I'm not saying that any particular pole -
12 I don't believe this is in evidence, so his testimony
13 about a demonstrative exhibit I don't think is
14 evidence.

15 JUDGE SIPPEL: Yes, it is. His testimony
16 is evidence.

17 MR. SEIVER: But his testimony about a
18 demonstrative exhibit -

19 JUDGE SIPPEL: The demonstrative exhibit is
20 not in evidence, unless you mark it and have it put
21 into evidence as a demonstrative exhibit.

22 This is what I was a little bit concerned

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1 about.

2 MR. SEIVER: Then I would like to mark this
3 particular diagram and put it into evidence.

4 JUDGE SIPPEL: As a cross-examination
5 exhibit?

6 MR. SEIVER: Yes, as a cross-examination
7 exhibit.

8 MR. CAMPBELL: Your Honor, we would object,
9 then.

10 He's not able to lay an appropriate
11 foundation that this pole is in existence and fairly
12 and accurately depicts what it was proffered for.

13 It was proffered for a demonstrative
14 purpose in argument, not in this witness' examination.
15 We put it up for purposes of demonstrating what a
16 transformer looks like; that was fine; for the
17 purposes of what a light looks like. And now he's
18 trying to allege that it's a violation and put it into
19 evidence. It's wholly improper. And it's going to
20 confuse the record.

21 This witness didn't even testify about
22 this exhibit, so it's beyond the scope.

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1 JUDGE SIPPEL: I'm afraid I'm going to have
2 to sustain that objection, Mr. Seiver. I mean we went
3 through - that's why we had an exhibit day, and we put
4 into evidence all these fine pictures. And I think
5 you've taken it with this witness as far as you can
6 go.

7 It's been very helpful. Certainly it's
8 been very helpful in terms of his explanation of an
9 understanding.

10 But I can't draw any conclusions with
11 respect to safety violations on a demonstrative -
12 unless you are putting it up for the demonstrative
13 purposes of showing - and it hasn't been done.

14 This is actually your exhibit, isn't it,
15 Mr. Campbell?

16 MR. CAMPBELL: It is, Your Honor.

17 JUDGE SIPPEL: Okay, let's go on.

18 MR. CAMPBELL: Let me rephrase that. It's
19 a demonstrative aide; it's not exhibit.

20 JUDGE SIPPEL: All right, I stand
21 corrected. Thank you.

22 MR. SEIVER: Well, let me just ask

1 generally, the measurements for the communications
2 worker safety zone is around this lowest exposed
3 conductor; it's below the bottom of the transformer,
4 is that right?

5 THE WITNESS: Different values apply. Yes,
6 each is different.

7 BY MR. SEIVER:

8 Q And if I were to show you a picture of a
9 pole, an existing pole, in Gulf Power's area, you'd be
10 able to make comments about whether or not there were
11 NESC violations or not on that pole?

12 A For the most part. I'm not a code expert.

13 Q Well, you do talk about the code
14 violations.

15 A Yes, sir, I do.

16 Q And you do say that it's important to
17 comply with the code?

18 A Yes.

19 Q And -

20 JUDGE SIPPEL: I think we've gone as far as
21 we can with it.

22 MR. SEIVER: Yes, Your Honor.

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1 Would Your Honor like me to keep going?
2 I have more, but I didn't know if the court wanted to
3 break for lunch at noon.

4 JUDGE SIPPEL: Well, that schedule that I
5 set was presupposing we were going to have a witness
6 on the stand at 9:00 o'clock. We didn't do that.

7 How much more do you have to go? Because
8 I'd like to get this witness off the stand if we can.

9 MR. SEIVER: I think probably close to
10 another hour, Your Honor.

11 JUDGE SIPPEL: Oh, okay.

12 And then you are going to have redirect?

13 MR. CAMPBELL: Depending on where he goes
14 in cross-examination. We do have some already, yes,
15 Your Honor.

16 JUDGE SIPPEL: I guess we're going to have
17 to break for lunch then.

18 We'll come back then at 1:15. Okay?
19 We're in recess. Thank you.

20 MR. SEIVER: And Your Honor, do we have a
21 direction that the witness is not to consult with
22 counsel on the testimony?

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1 JUDGE SIPPEL: You don't want him to talk
2 to his lawyer?

3 MR. SEIVER: Not while he's being
4 questioned. I don't think he's being questioned over
5 lunch.

6 JUDGE SIPPEL: No, I don't think there is
7 a need to give that instruction. He's not - certainly
8 he can't talk to another fact witness that is going to
9 come forward and testify to the same facts.

10 And I would caution - I would say the best
11 rule to follow is, go have an enjoyable lunch, and
12 forget about what you did here this morning, and come
13 back and we'll start all over again.

14 Okay, let's be in recess until 1:15.
15 Thank you.

16 (Whereupon at 11:59 a.m. the hearing in
17 the above-entitled matter went off the record to
18 return on the record at 1:17 p.m.)

19 JUDGE SIPPEL: We're back in session. I
20 apologize for coming in a little bit late. I've got
21 to coordinate my clock better with the one in the
22 courtroom.

1 Mr. Dunn, you should be back on the stand.

2 I should ask, you didn't talk about your
3 testimony at lunch, did you?

4 THE WITNESS: No, sir.

5 JUDGE SIPPEL: Go ahead, Mr. Seiver.

6 BY MR. SEIVER:

7 Q Mr. Dunn, I hope you had a nice lunch.

8 When we were talking earlier, we were
9 looking at some of your testimony. And there was a
10 discussion - if you want to look back at page 9 -
11 about the Southern Company Joint Use Committee.

12 A Yes.

13 Q You see that on line 16, and on line 17
14 you talk about whether there is an agreement on all
15 joint use issues. You say, no, they are localized
16 issues.

17 Does Southern Company have joint-use
18 standards in its specification manual?

19 A Yes, it does.

20 Q And does Gulf conform to those standards?

21 A Yes, we do.

22 Q Does Gulf have its own standards?

1 A When the Southern standards came out there
2 was provision made that each of the operating
3 companies could have a section of its own standards,
4 and Gulf does have its own standards in that mode.

5 Q I'd like you to look at what's been marked
6 as Gulf's Exhibit 12.

7 MR. CAMPBELL: Your Honor, while he's
8 looking at that, is there a problem if we remove our
9 jackets in the courtroom? Do we need to keep our
10 jackets on?

11 JUDGE SIPPEL: No, that's all right. You
12 may remove your jackets. That's it, though.

13 MR. CAMPBELL: I'll stop there.

14 (Laughter.)

15 BY MR. SEIVER:

16 Q Exhibit 12?

17 A Yes.

18 Q Is that the first page, though?

19 A Yes.

20 Q Okay. Those are the spec plates, am I
21 right? That we talked about a number of times?

22 A These are the C-1 through C-10 plates that

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1 are attached to the cable contracts, the ones that
2 were in effect at the time of the contracts.

3 Q Now are these different - these are Gulf
4 Power standards in these plates, not the Southern
5 Company standards; right?

6 A They are Gulf Power standards, National
7 Electric Code Standards. These specific plates are
8 not duplicated in the Southern Company standards with
9 the exception of - I think it's plate C-3 may be in
10 the Gulf Power portion.

11 JUDGE SIPPEL: What page are you on?

12 THE WITNESS: These are Exhibit 12, page 1
13 through 11.

14 JUDGE SIPPEL: Does it have a handbook page
15 number there?

16 MR. SEIVER: At the very bottom in the
17 center.

18 JUDGE SIPPEL: What page number?

19 THE WITNESS: This is Gulf Power
20 requirements.

21 JUDGE SIPPEL: Okay, go ahead.

22 BY MR. SEIVER:

1 Q Mr. Dunn, let's look - if you will look at
2 page 1, which is plate C-1?

3 A Yes.

4 Q And looking at that, on the pole there is
5 - well, it says, title, separation of service drops.
6 And you see there are some measurements there
7 including a D measurement that is between service
8 drops; do you see that?

9 A Yes.

10 Q And do you see in the table below where it
11 says, required clearance, it says 12 inches for that
12 D measurement.

13 A That is correct.

14 Q And as you move across there is an NESC
15 applicable reference section column, but for that
16 particular dimension, it says, GPC requirement; is
17 that right?

18 A That's correct.

19 MR. SEIVER: Your Honor, do you need the
20 exhibit?

21 JUDGE SIPPEL: I'm having a little bit of
22 trouble with this. Is this Gulf Exhibit 12?

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1 MR. SEIVER: That isn't. That's the actual
2 handbook. It should be the plates, Your Honor.

3 JUDGE SIPPEL: What is the exhibit number?

4 MR. SEIVER: Twelve.

5 MR. CAMPBELL: Your Honor, I think you may
6 be in complainant's Exhibit 12.

7 MR. SEIVER: This is Gulf Power exhibits,
8 it should be item two.

9 JUDGE SIPPEL: I'm sorry, go ahead.

10 Okay, you're on page one?

11 MR. SEIVER: We're on page one, Your Honor,
12 and I was asking him about dimension D, which on the
13 pole is measured between service drops, and in the
14 grid below, it shows it at 12 inches, and in the far
15 right-hand column it says GPC requirement.

16 And my question, Mr. Dunn, is, that 12-
17 inch separation on the drops is not an NESC
18 requirement then, it's just a GPC, Gulf Power
19 requirement; is that right?

20 THE WITNESS: That measure is the measure
21 on the pole at the time that this plate was last
22 revised. I think that that is only a Gulf Power

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